DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 98-0391 ST
Sales/Use Tax
For The Tax Periods: 1994 through 1996

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ISSUE

Use Tax – Exempt Purchases: Exempt Natural Gas Purchases not included in Audit Projection.

Authority: IC 6-2.5-2-1, IC 6-2.5-4-1, IC 6-2.5-3-2

Taxpayer protests the assessment of tax that resulted from natural gas account not used in audit projection.

STATEMENT OF FACTS

Taxpayer is a manufacturer that produces polypropylene film that is used in production of wrapping products and containers. During the audit, given the large number of purchase invoices to be examined, a projection was used in calculating additional purchases subject to tax. Taxpayer typically purchased gas from the local gas utility. Taxpayer purchased natural gas from February 1995 to January 1996 from an out-of-state gas company that offered a lower price. Taxpayer accrued and remitted tax in error to the Department on the natural gas purchased from the out-of-state company.

DISCUSSION

Pursuant to IC 6-2.5-2-1, a sales tax, known as state gross retail tax, is imposed on retail transactions made in Indiana. IC 6-2.5-4-1 provides that a retail transaction involves the transfer of tangible personal property. Pursuant to IC 6-2.5-3-2, "an excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction."

On June 26, 1997, taxpayer signed an agreement for Projecting Audit Results, Form AD-10A; this agreement details the following:

> Expense invoices will be reviewed in detail for the period January 1, 1995 to June 30, 1995. An error factor will be determined by using the amount of purchases subject to Use Tax or on which tax was paid in error as a percent of the total expenses in each account. This error factor will then be applied to the year 1994, July 1, 1995 to December 31, 1995, and the 1996 year.

Paragraph #3 of the agreement states that capital expenditures and special projects are not included in this projection agreement. Taxpayer is predominantly exempt in the use of natural gas. Credit was given for the ten months during the three-year audit period during which taxpayer erroneously remitted use tax on natural gas purchases from an out-of-state company.

However, the invoices from these exempt natural gas accounts were not used in the projection for unpaid use tax. Taxpayer argues that these exempt purchases upon which use tax was paid erroneously should have been used in the error factor as purchases on which tax was paid in error.

Pursuant to the agreement signed by taxpayer the error factor was to be determined by using the amount of purchases subject to use tax or on which tax was paid in error. The clear intent of the projection agreement was to arrive at an approximation that reasonably reflected the amount of unpaid use tax. Paragraph #3 of the projection agreement states that capital expenditures and special projects are not included in the projection. This indicates that only ordinary receipts were to be included. The natural gas accounts were excepted from the error factor because they contained extraordinary purchases and inclusion of the accounts would distort the projection.

FINDING

Taxpayer’s protest is denied.